

**REMARKS**

Claims 1- 6, 9 and 10 are pending in this application with claims 1, 5 and 10 being amended by this response. Claims 1, 5 and 10 have been formally amended for purposes of clarity to more clearly define the claimed invention. No new matter is added by these formal amendments to independent claims 1, 5 and 10.

Applicant would like to address the interpretation of the claims on pages 4 and 5 of the Rejection. The Rejection asserts that the feature of “daily intake of 3mg to 300mg” in claims 1 and 10 and the feature of “daily intake of 0.3mg to 3000mg” in claim 5 as intended use and therefore does not deserve patentable weight citing MPEP 2111.02 (II). Applicant disputes the interpretation in the Rejection because the cited section in the MPEP entitled “Effect of the Preamble” governs the treatment of the preamble and how statements made therein should be interpreted. The interpretation of claims 1,5 and 10 put forth in the Rejection deal specifically with a structural limitation of the composition. Specifically, the ingredients of the composition are present “in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg”. Thus, the claimed amount of “1mg to 500mg” directly correlates to the “daily intake of 3mg to 300mg” thus providing defined dosage based on the claimed amount. Therefore, Applicant respectfully submits that these feature of claims 1, 5 and 10 deserve patentable weight as they are in the body of the claim, not the preamble, and serve to further limit the claimed composition.

**Rejection under 35 USC 112, first paragraph**

Claim 10 is rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. The Rejection asserts that that the original disclosure fails to describe a tea bag obtained as a mixture containing tea extract and ground tea. Applicant respectfully disagrees. Specifically, Examples 3 and 4 on pages 7 and 8 of the original specification describe tea bags that include both a tea extract as well as ground tea. Specifically, in Example 4, the inventors clearly contemplate producing a tea bag that includes an extract of Benfuki, Benihomare and/or Benifuji (page 7, lines 24-26) with ground tea leaves, Benifuji, for example (page 8, lines 2- 4). Thus, Applicant respectfully submits that the specification fully describes the claimed tea bag and thus, claim 10 complies with the written description

requirement under 35 USC 112, first paragraph. Consequently, withdrawal of this rejection is respectfully requested.

**Rejection under 35 USC 112, second paragraph**

Claims 1, 3 – 6, 9 and 10 are rejected under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1, 5 and 10 have been formally amended for purposes of clarity and to eliminate any confusion as to the elements of the claimed composition. Consequently, withdrawal of the rejection of claims 1, 3 – 6, 9 and 10 is respectfully requested.

The Rejection further asserts that it is unclear whether the components are present in the food/drink or indicate the process by which the compounds in the food or drink. Applicant respectfully submits that the amendments to claims 1, 3 – 6, 9 and 10 now clearly state that one or more of the claimed ingredients are included which are “being obtained as a mixture containing tea extracts and ground tea”. Thus, Applicant respectfully submits that the ingredients are formed from a mixture of ground tea and tea extracts and are included, in that form, in the claimed composition. Therefore, Applicant respectfully submits that the claimed composition clearly defines the compounds included therein. Consequently, withdrawal of the rejection of claims 1, 3 – 6, 9 and 10 is respectfully requested.

Claim 10 is also rejected for using the phrase “tea bag sealed tea”. Applicant has formally amended claim 10 to claim a “tea bag” that includes the claimed ingredients “obtained as a mixture containing tea extracts and ground tea”. Thus, Applicant respectfully submits that claim 10 claims a tea bag including the one or more ingredients claimed therein. Consequently, withdrawal of the rejection of claim 10 is respectfully requested.

**Rejection of Claims 1, 5 and 6 under 35 U.S.C. § 103(a)**

Claim 1, 5 and 6 are rejected under 35 U.S.C. § 102(b) as being unpatentable in view of Yamamoto et al. (EP 1 157 693).

The present claimed composition is a food/drink having antiallergenic action A food/drink having antiallergenic action comprising one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin. The one or more ingredients in the composition are obtained as a mixture containing tea extracts and ground tea and the tea is at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, wherein sthe one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg. For the reasons presented below, Yamamoto et al., fails to disclose or suggest each feature claimed in amended claim 1.

The claimed composition advantageously provides a food/drink having one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me and strictinin which are obtained as a mixture containing tea extracts and ground tea, in which the tea is at least one selected from the group consisting of Benifuki, Benihomare and Benifuji. Conventional food or drinks that merely contain catechin derivatives such as EGCG3"Me have a bitter and unappetizing taste. However, the catechin derivative has antiallergenic properties associated therewith and thus, the inventors sought to improve the flavor of a composition that includes antiallergenic properties. This superior flavor improvement is a direct result of the one or more catechin derivative ingredients that are included in the composition "being obtained as a mixture contaning tea extracts and ground tea". Specifically, as discussed in Example 4 of the present specification, an experimental taste testing occurred whereby 7 of 10 participants indicated that the claimed composition which includes a mixture of tea extracts and ground tea (in this iteration, ground Benifuki) had a superior flavor and was most similar to the genuine tea brewed from tea leaves. Thus, the claimed composition provides an improved food/drink as compared to a drink formed from tea extracts alone.

Therefore, Yamamoto fails to disclose or suggest a composition equivalent to the claimed arrangement because Yamamoto merely provides that a desired food or beverage is produced using **tea extracts**. Thus, Yamamoto derives a food or beverage that is wholly unlike the claimed

composition which provides that the food/drink having antiallergenic affect includes EGCG3"Me that is **"obtained from a mixture containing tea extracts and ground tea"**. The claimed composition provides for a highly effective antiallergenic composition that has a significant taste improvement over compositions such as those described in Yamamoto.

The Rejection acknowledges that Yamamoto fails to disclose the use of ground tea leaves and asserts that it would be obvious for one skilled in the art to utilize ground tea leaves because "[d]ried tea leaves are known to be quite brittle and susceptible to breakage" and that "the extraction of the leaves would proceed faster if the leaves had a larger surface are, such as when in ground form". Applicant respectfully disagrees. The motivation in support of the conclusion of obviousness is erroneous and fails to consider the specific advantages provided by the claimed composition set forth in the response filed August 12, 2008. The motivation set forth asserts that using ground tea would improve production of the extract used in the Yamamoto composition. While that may be true, there is nothing in Yamamoto that discloses or suggests using tea extract AND ground tea in a composition as in the claimed arrangement. Furthermore, if one was merely seeking to increase the rate of extraction into the composition, as asserted in the Rejection, one would merely use tea extracts to derive the composition. In fact, support for Applicants interpretation of Yamamoto is supported because only the use of tea extracts is described.

The use of a "mixture containing tea extracts and ground tea" provides a significant improvement in taste over a composition that only includes a tea extract such as the composition described by Yamamoto. The composition described by Yamamoto contains the specific catechin derivative EGCG3"Me which has a bitter taste. The claimed composition provides a distinct advantage over the Yamamoto composition without spoiling the antiallergenic action of the catechin extract by forming the composition from "a mixture containing tea extracts and ground tea". Yamamoto merely describes producing a composition containing a tea extract. Therefore it would not be obvious to utilize tea leaves as a part of any composition produced in the manner described by Yamamoto. Rather, paragraph 0024 of Yamomoto, relied on in the Rejection, states that the catechin derivative used in the Yamomoto composition "is in turn obtained by extracting tea leaves...with an aqueous solvent". This process is further shown in Figures 1 and 2 of Yamamoto. Thus, Yamamoto describes a composition made only from tea

extracts that may be liquid or powder (paragraph 0030). However, this is unlike the claimed composition wherein the food/drink having antiallergenic action is "obtained from a mixture containing tea extracts and ground tea" which provides an enhanced flavor, taste and palatability, as compared to one formed only using tea extracts.

Claim 5 is considered patentable for the reasons presented above with respect to claim 1.

In view of the above remarks, Applicant respectfully submits that Yamamoto fails to disclose or suggest anything makes the invention as claimed in claim 1 and/or 5 unpatentable. As claim 6 is dependent on claim 5, it is respectfully submitted that these claims are patentable over Yamamoto. Consequently, withdrawal of the rejection of claims 1, 5 and 6 is respectfully requested.

**Rejection of Claims 1, 3 and 4 under 35 U.S.C. § 103(a)**

Claims 1, 3 and 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamamoto in view of Shokuhin Kenkyu Seika Jyohou (National Food Research Institute).

Claim 1 is considered patentable for the reasons presented above and the remarks presented above with respect to Yamamoto are incorporated herein by reference. Claim 1 is further considered patentable because Shokuhin adds nothing to Yamamoto that would disclose or suggest the claimed food/drink having an antiallergenic action that is produced using a "mixture containing tea extracts and ground tea" as in the claimed composition. Specifically, Shokuhin fails to discuss any acceptable amounts of EGCG3"Me for use in a composition of any type and certainly provides no enabling disclosure of a food or drink having an antiallergenic action that includes "one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin, said one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, wherein said one or more ingredients are

contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg” as recited in claim 1.

Moreover, Shokukin neither discloses nor suggests producing a composition that is “obtained as a mixture containing tea extracts and ground tea”. Instead, Shokuhin merely describes harvesting tea at certain times when the concentration of EGCG3”Me is greatest. Thus, Shokuhin is fundamentally different from the claimed composition. Therefore, contrary to the assertion in the Rejection, there is nothing in Shokuhin that discloses using ground tea leaves for any purpose.

Therefore, any combination of Yamamoto and Shokuhin would merely teach the proper time to harvest certain varieties of tea leaves so that a composition made solely from tea extracts obtained via dilution in a solvent is produced. Thus, Yamamoto (with Shokuhin) fails to disclose or suggest a food/drink having antiallergenic action that is “obtained as a mixture containing tea extracts and ground tea” as in the claimed composition. The use of a combination of ground tea and tea extracts to obtain the specified amount of the active ingredient as in the claimed composition is neither disclosed nor suggested by Yamamoto alone or in combination with Shokuhin.

Claims 3 and 4 are dependent on claim 1 and are considered patentable for the reasons presented above with respect to claim 1.

In view of the above remarks and amendments to the claims, Applicant respectfully submits that Shokuhin (with Yamamoto) fails to make the composition claimed in claim 1 unpatentable. As claims 3 and 4 are dependent on claim 1, it is respectfully submitted that claims 3 and 4 are also patentable over Shokuhin and/or Yamamoto. Consequently, withdrawal of the rejection of claims 1, 3 and 4 is respectfully requested.

**Rejection of Claims 1, 3-6 and 9 under 35 U.S.C. § 103(a)**

Claim 1, 3 – 6 and 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Shokuhin Kenkyu Seika Jyohou (National Food Research Institute) in view of Piper (WO 90/15542) and Steinberg (US Pat. No. 3,047,396).

The present claimed composition is a food/drink having antiallergenic action A food/drink having antiallergenic action comprising one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin. The one or more ingredients in the composition are obtained as a mixture containing tea extracts and ground tea and the tea is at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, wherein sthe one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg. For the reasons presented below, Shokuhin alone or in combination with any of Piper and/or Steinberg, fail to disclose or suggest each feature claimed in amended claim 1.

Shokuhin discusses harvesting tea leaves at different times to obtain leaves with different levels of EGCG3"Me. While Shokuhin states that EGCG3"Me is an antiallergenic found in tea leaves, Shokunhin is merely concerned with identifying preferred times for picking the leaves and the preferred type of tea prepared from the leaves in order to increase EGCG3"Me content. There is nothing in Shokuhin that discloses or suggests using tea leaves as part of a mixture with tea extract to produce a food/drink having antiallergenic properties. Gathering tea leaves is NOT equivalent to using "ground tea" in combination with "tea extracts" as an ingredient in a food or drink as recited in claim 1. Furthermore, there is no enabling disclosure in Shokuhin of a range of EGCG3"Me that is useful in an antiallergenic food or drink. Moreover, there is nothing in Shokuhin that discloses or suggests that specified range of EGCG3"Me is **"obtained as a mixture containing tea extracts and ground tea"** as in the claimed composition. Shokuhin is not at all concerned with an amount of EGCG3"Me for use in a food or drink. Rather, Sohkuhin seeks to maximize an amount of EGCG3"Me that may be derived from and is present in particular tea leaves based on the time the leaf is picked.

The Rejection asserts that Shokuhin teaches tea, which is a drink, made from the tea leaves as well as the content of EGCG3"Me in several varieties. Applicant respectfully submits that the Rejection fundamentally misinterprets the description provided in Shokuhin. As presented above, the only content value discussed in Shokuhin is directly correlated to the amount of EGCG3"Me that can be obtained from a tea leaf picked at a certain time. The Rejection further asserts that Shokuhin describes Benifuji tea leaves that include 1.5% EGCG3"M3 by weight. However, the content of the catechin in the leaves is NOT equivalent to the content of EGCG3"Me that is present in a food or drink wherein the ingredients thereof are "obtained as a mixture containing tea extracts and ground tea" as in the claimed composition. The assertion in the Rejection does not use elements that are comparable and therefore, the Shokuhin fails to provide enabling disclosure of the claimed composition. Specifically, the claimed composition provides EGCG3"Me "contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" that is "obtained as a mixture containing tea extracts and ground tea" from any of "Benifuki, Benihomare and Benifuji". Based on the assertion in the Rejection, Shokuhin would merely teach that a certain amount of leaves have a certain amount of EGCG3"Me but would NOT enable one skilled in the art to produce the claimed composition. Shokuhin fails to disclose or suggest any composition of any type and instead focuses on harvesting tea leaves.

The Rejection further asserts that Piper teaches, in claim 1, a composition formed from a ground tea and tea extract. Applicant respectfully disagrees. Rather, and contrary to the assertion in the Rejection, Piper merely describes a "beverage forming composition comprising ground tea or coffee". There is nothing in claim 1 that discloses or suggests a composition that includes an extract of any kind. Rather, Piper is merely concerned with providing a beverage having a particular particle size so that a certain amount of grounds are able to float to the surface of the beverage. Thus, Piper provides for a conventionally brewed coffee or tea beverage and not one wherein "one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji" as in the claimed arrangement. Piper is not at all concerned with a particular food/drink including the present claimed ingredients.



The Rejection further relies on Steinberg which describes a tea bag that includes 2.4 grams of a mixture of ground tea contained therein. However, similarly to both Shokuhin and Piper, there is no enabling disclosure of a food or drink that includes "one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin, **said one or more ingredients being obtained as a mixture containing tea extracts and ground tea**, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji" as in the claimed arrangement. Steinberg fails to disclose or suggest the use of tea extracts in any way for any purpose. Moreover, the teas described in Steinberg are fundamentally different from and not equivalent to the claimed varieties of tea.

The Rejection also asserts that, based on the Examiner's calculation, the combined references teach the claimed food/drink in the claimed amount. Applicant respectfully disagrees. Specifically, the Applicant respectfully disagrees with the assertion that Shokuhin describes a food/drink composition. There is nothing in Shokuhin that discloses or suggests any such combination. Moreover, the identified content of EGCG3"Me asserted on page 9 of the Rejection is NOT an equivalent to any of the elements claimed in amended claim 1. As discussed above, the amount of the catechin in an amount of leaves cannot be readily substituted for the amount of ingredients obtained as part of a mixture of tea extract and ground tea. These are non-equivalent values and therefore, Applicant respectfully submits that the calculation provided in support of the assertion of obviousness is incorrect. Moreover, the other value derived from Steinberg also is not able to be used to render the claimed composition obvious. Specifically, as discussed above, the types of ground tea used in Steinberg are not equivalent to those claimed in the present composition. Thus, Applicant respectfully submits that this too, renders the assertion made on page 10 of the Rejection invalid. Furthermore, even if these references were combined they fail to disclose or suggest a food or drink wherein "one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at

least one selected from the group consisting of Benifuki, Benihomare and Benifuji” as in the claimed arrangement.

Applicant also notes that, while not specifically incorporated in this Rejection heading, the Rejection references Yamamoto and asserts that Yamamoto envisions the present claimed dosage. Applicant respectfully disagrees. As discussed above, Yamamoto merely utilizes tea extracts which produces non-equivalent composition. Specifically, the Yamamoto composition fails to include “ingredients being obtained as a mixture containing tea extracts and ground tea” as recited in claim 1. Thus, Yamamoto adds nothing to any of Shokuhin, Piper and/or Steinberg that makes the present claimed invention unpatentable. Consequently, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 3, 4 and 9 are dependent on claim 1 and are considered patentable for the reasons presented above with respect to claim 1.

Claim 5 is considered patentable for the reasons as presented above with respect to claim 1.

In view of the above remarks and amendments to the claims, Applicant respectfully submits that Shokuhin alone or in combination with any of Piper and/or Stienberg fail to make claims 1 and 5 unpatentable. As claims 3, 4 and 9 are dependent on claim 1 and claim 6 is dependent on claim 5, Applicant respectfully submits that claims 3, 4, 6 and 9 are similarly not made unpatentable by Shokuhin with any of Piper and/or Stienberg. Therefore, withdrawal of the rejection of claims 1 3 – 6 and 9 is respectfully requested.

**Rejection of Claim 10 under 35 U.S.C. § 103(a)**

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Shokuhin Kenkyu Seika Jyohou (National Food Research Institute) in view of Piper (WO 90/15542) and Steinberg (US Pat. No. 3,047,396) and further in view of Marquardt (US Pat. No 5,050,775).

Claim 10 is considered patentable for the reasons discussed above with respect to claim 1. Specifically, Shokuhin (with Piper and/or Stienberg) fail to disclose or suggest a “tea bag

comprising one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin, said one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, and said one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" as recited in amended claim 10.

Unlike the claimed tea bag, Marquardt describes a beverage dispenser and more particularly to a disposable carton in which a bag containing a selected beverage may be mounted to facilitate the dispensing of the beverage. The carton is of a four piece construction including a tubular multi-sided carton body, a base on which the beverage bag is supported, a support slidably mounted in the carton body for supporting the filler of the beverage bag, and a cap. All necessary components of the carton automatically lock together when folded and no adhesives are required. There is also a cup holder which may be selectively mounted on the carton or which may be supported independently of the beverage dispenser adjacent the beverage dispenser (see Abstract).

The bag sealed in a carton as relied in the Rejection is fundamentally different from the claimed "tea bag" that includes one or more ingredients that are "obtained as a mixture containing tea extracts and ground tea". The container of Marquant is wholly unlike and unrelated to the present claimed tea bag and adds nothing to any of Shokuhin, Piper and/or Stienberg that provides enabling disclose of a "tea bag comprising one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin, said one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, and said one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" as recited in amended claim 10. Consequently, withdrawal of the rejection of claim 1 is respectfully requested.

**Provisional Nonstatutory Obviousness-type Double Patenting Rejection**

Claims 1 and 3 - 6 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 6 and 7 of co-pending U.S. Patent Application Serial No. 10/588,428 in view of Yamamoto.

Applicant respectfully submits that this Rejection is improper because the present claimed application has a filing and priority date that is earlier than the co-pending application serial no. 10/588,428 applied for and hereinafter referred to as "Nagai". The subject patent application was filed on August 15, 2005 and has a foreign priority date of September 18, 2002. Nagai, has a filing date of August 4, 2006 and a foreign priority date of February 6, 2004. Therefore, any patent resulting from the subject invention would expire prior to any patent issued to Nagai. Non-statutory double patenting is a public policy doctrine to prevent unjustified or improper extension of an applicant's patent. Therefore, a terminal disclaimer would not be proper in this case as the subject application pre-dates that of Nagai.

Additionally, even if proper, the claims in Nagai are fundamentally different from the claims of the subject application. Specifically, Nagai claims:

"6. A method of reducing triglyceride levels in an individual in need thereof, comprising administering to said individual a composition comprising an effective amount of at least one catechin selected from the group consisting of epigallocatechin 3-O(3-O-methyl) gallate, epicatechin-3-O(3-O-methyl) gallate, epigallocatechin 3-O(4-O-methyl) gallate, gallocatechin-3-O(3-O-methyl)gallate, catechin-3-O(3-O-methyl) gallate, catechin-3-O(4-O-methyl) gallate, gallocatechin-3-O(4-O-methyl)gallate, and stereoisomers thereof, wherein said catechins are derived from tea leaves of at least one selected from the group consisting of Benifuuki, Benifuji, Beihomare, Yaeho, Surugawase, Yutakamidori, Kanayamidori, Okumusashi, Seishin-taipan, Seishin-oolong, Ohba-oolong, Benibana, Benihikari, Yamakai, Yamamidori, Karabeni, Koshun, Souhuu, Okumidori and mixtures thereof.

7. The method according to claim 6, wherein the composition is a food/beverage, internal medicine, liniment, nose wash, nose drops, cosmetic or eye drops."

Thus, Nagai merely provides a method of using a composition that includes a particular catechin derived from a particular type of tea. There is nothing that discloses or suggests producing a food/beverage that includes one or more ingredients “obtained as a mixture of tea extracts and ground tea”. In fact, claims 6 and 7 of Nagai teaches away from the claimed composition because it is merely concerned with a composition including a catechin extract derived from tea leaves or a mixture of different types of tea leaves. There is nothing that suggests producing a food/beverage that includes the claimed catechins “obtained as a mixture of tea extracts and ground tea” as in the claimed arrangement. Rather, Nagai claims a method that uses a different composition, one that only includes a catechin, without specifying the manner in which the catechin is present.

The Rejection acknowledges that Nagai fails to teach that both tea extract and ground tea are present or the claimed composition. The Rejection further relies on Yamamoto to supplement the missing disclosure of Nagai. However, the Rejection acknowledges the Yamamoto fails to teach ground tea leaves but asserts that it is obvious to incorporate these leaves into the composition of Yamamoto because the tea leaves are brittle and the extraction would proceed faster if the leaves were ground. Applicant respectfully disagrees. The motivation in support of the conclusion of obviousness is erroneous and fails to consider the specific advantages provided by the claimed composition set forth in the response filed August 12, 2008. The motivation set forth asserts that using ground tea would improve production of the extract used in the Yamamoto composition. While that may be true, there is nothing in Yamamoto that discloses or suggests using tea extract AND ground tea in a composition as in the claimed arrangement. Furthermore, if one was merely seeking to increase the rate of extraction into the composition, as asserted in the Rejection, one would merely use tea extracts to derive the composition. In fact, this is directly suggested in Yamamoto because only the use of tea extracts is described.

The use of a “mixture containing tea extracts and ground tea” provides a significant improvement in taste over a composition that only includes a tea extract such as the composition described by Yamamoto. The composition described by Yamamoto contains the specific catechin derivative EGCG3”Me which has a bitter taste. The claimed composition provides a distinct advantage over the Yamamoto composition without spoiling the antiallergenic action of

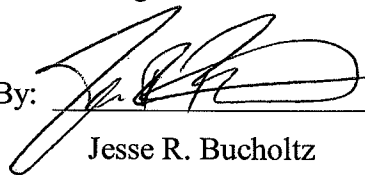
the catechin extract by forming the composition from "a mixture containing tea extracts and ground tea". Yamamoto merely describes producing a composition containing a tea extract. Therefore it would not be obvious to utilize tea leaves as a part of any composition produced in the manner described by Yamamoto. Rather, paragraph 0024 of Yamamoto, relied on in the Rejection, states that the catechin derivative used in the Yamamoto composition "is in turn obtained by extracting tea leaves...with an aqueous solvent". This process is further shown in Figures 1 and 2 of Yamamoto. Thus, Yamamoto describes a composition made only from tea extracts that may be liquid or powder (paragraph 0030). However, this is unlike the claimed composition wherein the food/drink having antiallergenic action is "obtained from a mixture containing tea extracts and ground tea" which provides an enhanced flavor, taste and palatability, as compared to one formed only using tea extracts.

Therefore, Applicant respectfully submits that the claims of the subject application are patentably distinct from Nagai alone or in combination with Yamamoto.

Having fully addressed the Examiner's rejections, it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the Applicant's attorney at the phone number below, so that a mutually convenient date and time for a telephonic interview may be scheduled.

Respectfully submitted,

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